ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[XXXX-200X-XXXX; FRL-XXXX-X]

RIN 2060-AM46

Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to exempt entities that import aircraft fire extinguishing spherical pressure vessels containing halon-1301 ("aircraft halon bottles") for hydrostatic testing from the import petitioning requirements for used controlled substances. The petitioning requirements compel importers to submit detailed information to the Administrator concerning the origins of the substance at least forty working days before a shipment is to leave a foreign port of export. This direct final rule reduces the administrative burden on entities that are importing aircraft halon bottles for the purpose of maintaining these bottles to commercial safety specifications and standards set forth in Federal Aviation Administration airworthiness directives. This direct final rule does not exempt entities that wish to import bulk quantities of halon-1301 in containers that are not being imported for purposes of hydrostatic testing.

DATES: The direct final rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]** without further notice, unless EPA receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]**, or by **[INSERT DATE 45 DAYS**

AFTER DATE OF PUBLICATION] if a hearing is requested. If adverse comments are received, EPA will publish a timely withdrawal in the *Federal Register* informing the public that this rule will not take effect. If anyone contacts the EPA requesting to speak at a public hearing by **[INSERT DATE 10 DAYS AFTER PUBLICATION]**, a public hearing will be held on **[INSERT DATE 14 DAYS AFTER PUBLICATION].**

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2005-0130, by one of the following methods:

- www.regulations.gov: follow the on-line instructions for submitting comments.
- E-mail: A-and-R-docket@epa.gov
- Fax: 202-343-2337, attn: Hodayah Finman
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West, 1301 Constitution Avenue, NW, Room B108, Mail Code 6102T, Washington, D.C. 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No **EPA-HQ-OAR-2005-0530**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov wesbite is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, (202) 343-9246.

SUPPLEMENTARY INFORMATION:

EPA is publishing this amendment without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comment. The Agency does not anticipate any adverse comment because of the importance of testing aircraft halon bottles for safety purposes and the environmental benefit resulting from the preventative maintenance of these containers. If EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. Should EPA receive adverse comments, the Agency would consider and address all public comments received on this direct final rulemaking in any subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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I. General Information

A. Regulated Entities

The aircraft halon bottle exemption will affect the following categories:

Category	NAICS code	Examples of regulated entities
Hydrostatic testing laboratories or services	541380	Halon aircraft bottle testing facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA believes could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. What Should I Consider When Preparing My Comments?

1. *Confidential Business Information.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Stratospheric Protection

The stratospheric ozone layer protects the Earth from penetration of harmful ultraviolet (UV-B) radiation. International consensus exists that releases of certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide, contribute to the depletion of the stratospheric ozone layer and should be controlled. Ozone depletion harms human health and the environment through increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to

plants including crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. Under the Clean Air Act Amendments of 1990 (CAAA of 1990), the domestic implementing legislation for ozone layer protection, ozone-depleting substances (ODSs) have been designated as either class I or class II controlled substances (see 40 CFR part 82, appendices A and B to subpart A). Class I controlled substances are CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbons and chlorobromomethane; class II controlled substances are hydrochlorofluorocarbons (HCFCs).

B. Halons

Halons are gaseous or easily vaporized halocarbons used primarily for extinguishing fires, and for explosion protection. The two halons most widely used in the United States are halon-1211 and halon-1301. Halon-1211 is used primarily in streaming applications while halon-1301 is typically used in total flooding applications. Some limited use of halon-2402 also exists in the United States, but only as an extinguishant in engine nacelles (the streamlined enclosure surrounding the engine) on older aircraft and in the guidance system of Minuteman missiles. The action in this direct final rule is not expected to affect the supply of unblended halons for these uses.

Halons are used in a wide range of fire protection applications because they combine four characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires (referred to as Class A, B, and C fires, respectively). Second, they dissipate rapidly, leaving no residue, and thereby avoid secondary damage to the property they are protecting. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment where

they can penetrate to and around physical objects to extinguish fires in otherwise inaccessible areas. Finally, halons are generally safe for limited human exposure when used with proper exposure controls.

Despite these advantages, halons have a significant drawback; they are among the most ozone-depleting substances in use today. With an ozone depleting potential (ODP) of 0.2 representing the threshold for classification as a class I substance, halon-1301 has an estimated ODP of 10.0 and an atmospheric lifetime of 65 years. Halon-1211 has an estimated ODP of 3.0 and an atmospheric lifetime of 16 years. As an illustration of the significance of halons as ODSs, while total halon production (measured in metric tons) consisted of just 2 percent of the total production of class I substances in 1986, halons represented 23 percent of the total estimated ozone depletion attributable to class I substances produced during that year. Prior to the early 1990s, the greatest releases of halon into the atmosphere occurred not in extinguishing fires, but during testing and training, service and repair, and accidental discharges. Data generated as part of the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) technology assessment indicated that only 15 percent of annual halon-1211 emissions and 18 percent of annual halon-1301 emissions occur as a result of use to extinguish actual fires. These figures indicated that significant gains could be made in protecting the ozone layer by revising testing and training procedures and by limiting unnecessary discharges through better detection and dispensing systems for halon and halon alternatives.

The fire protection community began to conserve halon reserves in response to the impending ban of the production and consumption of halons 1211, 1301, and 2402, which became effective January 1, 1994. In the context of the regulatory program, the use of the term

consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as production plus imports minus export of controlled substances (Article I of the Protocol and Section 601 of the CAAA of 1990).

C. Statutory Authority

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ODSs can be found at 40 CFR Part 82. The regulatory program was originally published in the *Federal Register* on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the CAAA of 1990, which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

Since January 1, 1994, in accordance with the Montreal Protocol and the CAAA of 1990's accelerated phaseout provision, U.S. production and consumption of halon-1301 has been prohibited (40 CFR 82.4(c)(1), 58 FR 65018). The Montreal Protocol mandated a freeze in the production and consumption of halon-1211, halon-1301, and halon-2402 in 1992 at the 1986 baseline levels and, as subsequent adjustments adopted by the Parties at their Fourth Meeting in 1992, required a 100 percent phaseout by January 1, 1994. EPA issued regulations under authority of Sections 604 and 606 of the CAAA of 1990 reflecting this phaseout schedule. Section 604 of the CAAA of 1990 sets forth initial phaseout dates for certain Class I substances,

including halons, while Section 606 states that EPA shall promulgate an accelerated phaseout schedule if the Agency determines that it may be necessary to protect human health and the environment; if the Agency determines that is practicable based on the availability of substitutes; or if the Montreal Protocol is modified to include a more stringent schedule. EPA found that all of these criteria were met with respect to the accelerations adopted at the Parties' Fourth Meeting (58 FR 65024).

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, most other class I controlled substances on January 1, 1996, and methyl bromide on January 1, 2005, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed or destroyed (40 CFR 82.4(b)). They also allow limited manufacture if the substances are (1) exported to developing countries listed under Article 5 of the Protocol to meet basic domestic needs, or (2) produced for essential or critical uses as authorized by the Protocol and the regulations (40 CFR 82.4 (b)).

The regulations allow for the import of phased-out class I controlled substances provided the substances are either transformed or destroyed (40 CFR 82.4(d)). Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) previously used, recycled, or reclaimed and the importer files a petition and receives a non-objection notice from the Administrator (40 CFR 82.4(j)); (2) imported for essential or critical uses as authorized by the Protocol and the regulations, or (3) a transhipment or a heel (40 CFR 82.4(d)).

When the Stratospheric Ozone Protection Program was first implemented in the U.S., EPA did not make a distinction between the import of new and used controlled substances. In 1992, Decision IV/24 taken by the Parties to the Montreal Protocol interpreted Article 2 of the treaty as allowing a country to import a used ODS beyond the phaseout date of that substance. Specifically, the decision indicates the Parties' interpretation that import of a "used" substance does not constitute "consumption" of a substance. The Parties took this decision to promote the use of banks of ODS and thus facilitate the transition to ozone-safe alternatives. Following Decision IV/24, EPA added a regulatory provision to allow for the import of previously used or recycled controlled substances without allowances (December 10, 1993, 58 FR 65018). Prior to that time, all imports of controlled substances, whether new or used, could only occur if the importing entity held and expended sufficient allowances for the transaction (July 30, 1992, 57 FR 33754).

The Agency found, however, that the December 1993 rule was too permissive and that containers of virgin ODS could be, and in fact were, easily imported as fraudulently labeled used material. Other countries also experienced a rise in the illegal shipment of fraudulently labeled ODS following the reclassification of used ODS in Decision IV/24. Therefore, in 1994, EPA proposed to revise its regulations and require all importers to petition the Agency prior to importing a used ODS (November 10 1994, 59 FR 56275). This petition process would allow the Agency to verify that a shipment in fact contained a used controlled substance and thus reduce, although not eliminate, the potential for illegal trade. In addition, the Agency also proposed to amend the definition of "used and recycled controlled substances" to include only the term "used." In its description of the proposed changes to the definition of used controlled

substances, the Agency further stated that: "[i]n this manner, a controlled substance is defined as used if it was recovered from a use system, regardless of whether it was subsequently recycled or reclaimed" (59 FR 56285). These proposed changes, with minor adjustments based on comments, were finalized by the Agency and the petition process for the import of used ODS was codified into EPA regulation (May 10, 1995, 60 FR 24970).

The Agency later addressed the petition process in a direct final rulemaking (August 4, 1998, 63 FR 41626). This rule made several modifications to the petition process including changing the amount of time the Administrator has to review transactions and reducing the de minimis threshold for the petition process from 150 pounds of ODS to 5 pounds. Some of the changes associated with the import petition process received adverse comment and were withdrawn (October 5, 1998, 63 FR 53290). A subsequent final rule issued by the Agency established the requirements that are currently in effect for the import petition process (December 31, 2002, 67 FR 79861).

Additional authority for the amendments in this direct final rule is found in section 608(a)(2) of the CAAA of 1990, which directs EPA to establish standards and requirements regarding use and disposal of class I and II substances other than refrigerants. The goal of section 608(a) is to reduce the use and emission of ODS to the lowest achievable level and maximize the recapture and recycling of such substances. EPA previously issued a rule implementing this provision with respect to halon use generally. 63 FR 11084 (March 5, 1998); 40 CFR Part 82, Subpart H.

In the instance of aircraft halon bottles, EPA believes that this direct final rule will create a further incentive for industry to minimize emissions of halons by exempting certain importers

from the up-front petition process in order to facilitate proper maintenance of the bottles and thereby minimize the potential for fissures and leaking of ODS from these bottles.

D. Summary of Direct Final Rule

In this action, EPA is further amending its regulations to exempt the import of aircraft halon bottles for hydrostatic testing from the import petition process.

EPA classifies halon-1301 contained in aircraft halon bottles removed from an on-board fire suppression system as used controlled substances. EPA regulations define "used controlled substances" as "controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)" (40 CFR 82.3). Halon-1301 is placed into aircraft bottles and the bottles are then inserted into a fire suppression system. When the system is dismantled or the bottles are removed from the system, the halon-1301 contained in the bottles is considered used since it was removed from a use system.

In the history of the program, the mechanisms that govern the import of used ODS have ranged from no controls to a detailed up-front petition process. The Agency, to a significant extent, selected implementation mechanisms based on parameters such as practicability and protection of the ozone layer. When EPA believed it was to the benefit of the environment to encourage the import of used ODS, the Agency implemented a nonrestrictive import mechanism. When the Agency discovered a rise in illegal trade of ODS, EPA instituted a thorough petition process to curb the traffic of illicit material.

EPA does not believe that it is economically feasible to illegally import halon-1301 in aircraft bottles due to the size, costs, and uniqueness of the bottles. Thus, part of the basis for

EPA's action to establish a rigorous petition process does not apply in this instance. Furthermore, EPA believes that a narrow exemption for aircraft halon bottles is appropriate because it will remove impediments to the proper maintenance of these halon-1301 containing bottles. In the United States and abroad the exclusion of these aircraft bottled from the import petition process will cause transit and testing to occur in a more expeditious fashion, thus promoting proper maintenance of these five suppression devises. Proper maintenance of these bottles is crucial, not only from a safety perspective as described in the following section of this preamble, but from an environmental point of view as well. Halon-1301 has a high ODP and the Agency supports prevention of accidental emissions through proper maintenance of the storage vessels.

III. Aircraft Halon Bottle Exemption from the Import Petitioning Process

A. Import of Aircraft Halon Bottles for Hydrostatic Testing

Halon-1301 is a gaseous compound used in fire suppression systems and devices. The chemical is used in aircraft halon bottles that are components of larger fire suppression systems used on aircraft. Halon bottles are pressurized containers that typically contain from one to one hundred pounds of a halon-1301/nitrogen mixture. As halon bottles are under high pressure in severe environments, they are at risk of leakage and their effectiveness may decrease over time. Hydrostatic testing of the bottles detects such leakage and determines whether the bottles are functioning properly.

The halon bottles must be tested routinely under Federal Aviation Administration (FAA) and United States Department of Transportation (DOT) regulations. Federal Aviation

Regulations (FAR) section 25.851 (a)(6) (14 CFR Part 25) requires the presence of halon bottles aboard transport category aircraft. The FAA Flight Standards Handbook Bulletin for Airworthiness 02-01B (effective 7/16/02 and amended 2/10/03) provides guidance on the maintenance and inspection of the halon bottles and states in paragraph 3(b) that "pressure cylinders that are installed as aircraft equipment will be maintained and inspected in accordance with manufacturer's requirements." Manufacturer's requirements specify periodic testing of aircraft halon bottles.

Halon bottles may be serviced by an on-site facility at an airport or may be removed from the aircraft, shipped to a testing facility at a location in the U.S. or abroad, and then returned to the airline. Once a hydrostatic testing company receives the halon bottles, the used halon-1301 is removed and recovered for future reclamation. The bottles are then hydrostatically tested to ensure durability and effectiveness, after which they are re-filled with halon-1301 and returned to the customer.

EPA is aware of two major service companies and about 15 other companies that provide hydrostatic testing services to the airline industry. Industry experts estimate that approximately 60,000 bottles are in service globally, some portion of which are serviced in U.S. testing facilities. Information provided to the Agency from the two major U.S. companies indicates that each year those companies service about 5,000 bottles, some portion of which are imported. The amount of halon in the aircraft bottles can range from 1 to 100 pounds of halon-1301, although most bottles contain between 5 to 25 pounds. If EPA were to assume that, in total, the smaller companies service half as many bottles as the two major companies do together, and EPA were to assume that each of those bottles contained 25 pounds of halon, that would mean that in a

given year the U.S. is servicing bottles containing 187,500 pounds of halon-1301 per year, which is equivalent to 850 ODP weighted metric tons. However, EPA understands that not all aircraft bottles are imported with complete charges, meaning that a bottle capable of holding 25 pounds of halon-1301 may in fact contain less. It is industry practice, however, to export the bottles back to the country of origin with a full charge of halon-1301. Thus, the U.S. is likely a net exporter of used halon in aircraft bottles.

A recent industry estimate on the amount of halon-1301 imported into the U.S. in aircraft bottles indicated that some 2,700 bottles are imported for testing on an annual basis. These bottles are imported containing 24,000 pounds of halon and exported containing 28,000 pounds of halon. These estimates are based on data from seven companies which the industry believes represents 90 percent of the market. This data confirms EPA's understanding of the relatively small amount of halon imported for the purpose of testing aircraft bottles and the practice of exporting more halon than is imported in the process of such routine servicing.

B. Import Petition Requirements for Used Controlled Substances

The final rule published in the *Federal Register* on May 10, 1995 (60 FR 24970), established a petitioning system for the import of class I controlled substances. The system required a person to submit a petition to import used class I controlled substances prior to the import of each shipment over a de minimis amount. A de minimis amount of 150 pounds was initially established in the May 10, 1995 final rule to allow companies to import small samples of material for testing or lab analysis without the requirement to submit a petition to EPA prior to import of the controlled substance; that amount was later lowered to 5 pounds.

As explained in the preamble to the May 10, 1995, final rule, the intent of the petition process is to allow EPA to independently verify whether a class I controlled substance is, in fact, previously used. EPA established the petition process because quantities of class I controlled substances were entering the U.S. mis-identified as "used" when they were, in fact, newly produced. Under the Montreal Protocol, trade in previously used controlled substances is permitted even after the phaseout dates. To independently verify that a quantity of class I controlled substance was previously used, EPA needs detailed information about the source facility from which the material was recovered.

On August 4, 1998 (63 FR 41625), EPA finalized changes to the petitioning process that included a more comprehensive and detailed list of required information for petitions to import used class I controlled substances, including a requirement to provide information documenting the custody chain of the controlled substance starting from the point of origin and continuing throughout the entire custody chain. Most of these changes were intended to make the regulatory text more explicit regarding the type of information that EPA needs to independently verify the previous use of the controlled substance. One of the amendments affecting importers of halon-1301 bottles was the change in the de minimis amount to five pounds. The de minimis provision was intended to allow companies to import samples of material for laboratory analysis. The de minimis amount was lowered because EPA learned that such samples are generally taken from large tanks in special cylinders that weigh less than 2 pounds.

The import petition requirements are specified at 40 CFR 82.13 (g)(2). They state, in part, that 40 days prior to shipment from the foreign port of export, the importer must provide information to the Administrator including, but not limited to the following: name and quantity

of controlled substance to be imported; name and address of the importer along with information for a contact person; name and address of source facility along with information for a contact person; detailed description of the previous use providing documents where possible; a list of the name, make and model of the equipment from which the ODS was recovered; name and address of exporter along with contact information; the U.S. port of entry and expected date of shipment; a description of the intended use of the controlled substance; and the name and address of the U.S. reclamation facility where applicable. EPA may issue an objection to the petition if the information submitted by the importer lacks or appears to lack any of the information required under 40 CFR 82.13(g)(2). The Agency recognizes that this level of detail is not necessary to control the import of halon-1301 contained in aircraft halon bottles destined for service and is therefore amending its regulations as described in the following section of this preamble.

C. Exemption to the Import Petition Requirements

This direct final rule exempts importers of halon-1301 shipped in aircraft halon bottles from the petition import requirements under 40 CFR 82.13 (g)(2), as described in the previous section of this preamble. An importer or exporter of halon-1301 contained in aircraft halon bottles is typically a maintenance and testing facility that is a certified repair station under 14 CFR Part 145 or an aircraft halon bottle manufacturer that imports and exports aircraft fire extinguishing pressure vessels for servicing, maintenance, and hydrostatic testing. Under this direct final rule, importers of aircraft halon bottles are no longer required to submit petition data to, and seek approval from, the Administrator prior to individual imports.

D. Reporting and Recordkeeping Requirements for Importers and Exporters

The Agency tracks the amount of used halon-1301 imported and exported annually in aircraft bottles because such movement of halon across U.S. borders constitute import and export as characterized under 40 CFR Part 82. EPA reminds importers that they are still required to maintain import records, as set forth in 40 CFR 82-.13(g)(1), including but not limited to the following: (i) The quantity of each controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a controlled substance; (ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and the information provided with the petition as under §82.13(g)(2), where applicable; (iii) The quantity of controlled substances other than transhipments or used, recycled or reclaimed substances imported for use in processes resulting in their transformation or destruction and quantity sold for use in processes that result in their destruction or transformation; (iv) The date on which the controlled substances were imported; (v) The port of entry through which the controlled substances passed; (vi) The country from which the imported controlled substances were imported; (vii) The commodity code for the controlled substances shipped, which must be one of those listed in Appendix K to 40 CFR Part 82, Subpart A; (viii) The importer number for the shipment; (ix) A copy of the bill of lading for the import; (x) The invoice for the import; (xi) The quantity of imports of used, recycled or reclaimed class I controlled substances; and (xii) The U.S. Customs entry form.

EPA is amending the recordkeeping requirement at 40 CFR 82.13(g)(1) to state that information provided through the petition process is only to be maintained "where applicable." No such information will have been provided in the case of aircraft halon bottles. EPA is not amending the remaining reporting and recordkeeping requirements for importers and exporters,

found at 40 CFR 82.13(g)(4) and (h)(1) respectively, but is restating them in this preamble for convenience of the public.

EPA reminds importers of aircraft halon bottles that they are required to submit quarterly reports within 45 days of the end of the applicable quarter, in accordance with 40 CFR 82.13(g)(4), that include but are not limited to the following information: (i) a summary of the records required in paragraphs 40 CFR 82(g)(1) (i) through (xvi) for the previous quarter; (ii) the total quantity imported in kilograms of each controlled substance for that quarter; and (iii) the quantity of those controlled substances imported that are used controlled substances.

EPA reminds persons that may test aircraft halon bottles and subsequently export them that they must submit an annual report (45 days after the end of the calendar year, in accordance with 40 CFR 82.13(h). The annual report must includes but is not limited to the following information: (i) The names and addresses of the exporter and the recipient of the exports; (ii) The exporter's Employee Identification Number; (iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed; (iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories; (v) The country to which the controlled substances were exported; (vi) The amount exported to each Article 5 country; (vii) The commodity code of the controlled substance shipped.

EPA has provided guidance on the reporting and recordkeeping requirements. The importer quarterly report form and the annual exporter report form may be found on EPA's website at www.epa.gov/ozone/record/index.html. This information is also available via the Ozone Hotline at (800) 296-1996.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this is a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Current recordkeeping and reporting requirements under 40 CFR 82.13 allow EPA to implement the

provisions of this direct final rule. This action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13 (g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of this direct final rule on small entities, small entity is defined as: (1) a small business that is primarily engaged in the hydrostatic testing of aircraft halon bottles as defined in NAIC code 541380 with annual receipts less than $10,000,000 (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule will reduce the administrative burden on all entities who import aircraft halon bottles. We have therefore concluded that this direct final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Section 203 of UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or

uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

This direct final rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal government or the private sector. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule is expected to primarily affect importers and exporters of halons. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, we nonetheless have reason to believe that the

environmental, health, or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," Eur J Cancer 1994; 30A: 1647-54; (2) Elwood JM, Jopson J. "Melanoma and sun exposure: an overview of published studies," Int J Cancer 1997; 73:198-203; (3) Armstrong BK. "Melanoma: childhood or lifelong sun exposure" In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63-6; (4) Whiteman D., Green A. "Melanoma and Sunburn," Cancer Causes Control, 1994: 5:564-72; (5) Kricker A, Armstrong, BK, English, DR, Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," Int J Cancer 1995; 60: 489-94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," Arch Dermatol 1995; 131: 157-63; (7) Armstrong, BK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89-116.

EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Thus, this rule is not expected to increase the impacts on children's health from stratospheric ozone depletion.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104_113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 60 DAYS FROM PUBLICATION]**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Chemicals, Exports, Halon, Imports, Ozone Layer, Reporting and recordkeeping requirements.

Dated:

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.3 is amended by adding a definition for “Aircraft halon bottle” to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Aircraft halon bottle means a vessel used as a component of an aircraft fire suppression system containing halon-1301 approved under FAA rules for installation in a certificated aircraft.

* * * * *

3. Section 82.4 is amended by revising paragraph (j) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in aircraft halon bottles, without having received a non-objection notice from the Administrator in accordance with §82.13(g)(2) and (3).

* * * * *

4. Section 82.13 is as follows by revising paragraphs (g)(1)(ii) and (g)(2) introductory text.

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(g) * * *

(1) * * *

(ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and, where applicable, the information provided with the petition as under (g)(2) of this section;

* * * * *

(2) Petitioning – Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in §82.3, except for Group II used controlled substances shipped in aircraft halon bottles, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

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